

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEBORAH COONEY,  
Plaintiff,  
v.

THE CALIFORNIA PUBLIC UTILITIES  
COMMISSION, et al.,  
Defendants.

No. C 12-6466 CW  
ORDER DENYING  
PLAINTIFF'S MOTION  
TO ALTER OR AMEND  
THE JUDGMENT AND  
FOR LEAVE TO FILE  
AN AMENDED  
COMPLAINT  
(Docket No. 63)

United States District Court  
For the Northern District of California

On July 15, 2014, the Court entered an order granting motions to dismiss filed by Defendants the State of California, the California Public Utilities Commission (CPUC), CPUC President Michael Peevey and California Attorney General Kamala Harris (the State Defendants) and Defendant Itron, Inc. Docket No. 55. On September 15, 2014, the Court entered an order denying Plaintiff Deborah Cooney's motion for default judgment against San Diego Gas and Electric (SDG&E) and dismissing the claims against SDG&E. Docket No. 60. The Court entered judgment. Docket Nos. 61 and 62. Plaintiff has now filed a motion to alter or amend the judgment and for leave to file an amended complaint. The State Defendants, Itron and SDG&E oppose the motion. Having considered the parties' papers and the record in this case, the Court GRANTS PLAINTIFF'S MOTION IN PART and DENIES IT IN PART.

## DISCUSSION

Plaintiff moves pursuant to Federal Rules of Civil Procedure 52(a), 59(e), 60(a) and 60(b) to alter or amend the judgment in this case. Plaintiff asserts that (1) the judgment is void due to lack of jurisdiction; (2) the complaint can be amended to state a claim and she should be granted leave to amend the complaint; and (3) she is entitled to relief from the judgment based upon fraud on the Court.

## I. Jurisdiction

Plaintiff first argues that the judgment is void because the Court lacked jurisdiction over her state law claims. Accordingly, Plaintiff argues, the Court lacked the authority to dismiss her claims with prejudice.

## A. Eleventh Amendment Claims

Plaintiff first correctly notes that her state law claims against Attorney General Harris and CPUC President Peevey were dismissed based on a lack of jurisdiction due to the Eleventh Amendment. "The Eleventh Amendment is a limit on federal courts' jurisdiction." Freeman v. Oakland Unified Sch. Dist., 179 F.3d 846, 847 (9th Cir. 1999) (internal citations omitted). "Dismissals for lack of jurisdiction should be without prejudice so that a plaintiff may reassert his claims in a competent court." Id. (internal quotation marks omitted). Accordingly, Plaintiff argues that the Court should have dismissed the claims without prejudice to filing in state court. The Court GRANTS Plaintiff's motion on this ground and dismisses the claims against Attorney General Harris and CPUC President Peevey without prejudice to filing in state court.

1 B. Claims Barred by California Public Utility Code § 1759  
2 Plaintiff next argues that the Court erred when it dismissed  
3 her state law claims against Itron and SDG&E with prejudice. The  
4 Court found that those claims were barred by California Public  
5 Utility Code § 1759. The Court noted that § 1759 "bars private  
6 actions against utilities where the relief granted would undermine  
7 a regulatory regime established by the California Public Utility  
8 Commission." Docket No. 55 at 7, citing San Diego Gas & Elec. Co.  
9 v. Superior Court, 13 Cal. 4th 893, 902-03 (1996). Because § 1759  
10 not only bars federal courts from hearing such cases but instead  
11 bars such private actions in any court, there is no other  
12 "competent court" in which Plaintiff could bring these claims.  
13 Accordingly, the Court did not err when dismissing Plaintiff's  
14 state law claims against Itron and SDG&E with prejudice. The  
15 Court DENIES Plaintiff's motion on this ground.

16 II. Federal Rules of Civil Procedure 52 and 15

17 Plaintiff next argues that "the Complaint can easily be  
18 amended to state a claim for relief" and that the Court should  
19 reverse its findings pursuant to Federal Rule of Civil Procedure  
20 52 and allow her to amend her complaint. Docket No. 63 at 3.  
21 However, as Defendants point out, Federal Rule of Civil Procedure  
22 52 relates to findings of fact and conclusions of law. The Court  
23 has made no such findings or conclusions. Accordingly, Rule 52  
24 provides no basis for challenging the Court's judgment in this  
25 case. Further, "once judgment has been entered in a case, a  
26 motion to amend the complaint can only be entertained if the  
27 judgment is first reopened." Lindauer v. Rogers, 91 F.3d 1355,  
28 1357 (9th Cir. 1996). Because Plaintiff has provided no basis for

1 reopening the judgment, the Court need not address her arguments  
2 in favor of leave to amend.

3 III. Fraud Upon the Court

4 Finally, Plaintiff argues that she is entitled to relief from  
5 the judgment "for reasons of both intrinsic and extrinsic fraud  
6 upon the Court." Docket No. 63 at 8. However, Plaintiff provides  
7 no basis for such a finding. Instead, she asserts that the fact  
8 that the Court rejected her arguments in opposition to the motions  
9 to dismiss is itself evidence of fraud. This is not sufficient to  
10 support a claim of fraud on the court.

11 CONCLUSION

12 For the reasons stated above, the Court GRANTS IN PART  
13 Plaintiff's motion to alter or amend the judgment. The Clerk of  
14 the Court shall enter an amended judgment indicating that  
15 Plaintiff's state law claims against Attorney General Harris and  
16 CPUC President Peevey are dismissed without prejudice to refiling  
17 in state court. The Court DENIES Plaintiff's motion in all other  
18 respects.

19  
20 IT IS SO ORDERED.

21  
22 Dated: November 26, 2014

23   
24 CLAUDIA WILKEN  
25 United States District Judge  
26  
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